STATEMENT

American Atheists respectfully submits this sur reply brief on the application of strict scrutiny under the Fremont Constitution.

ARGUMENT

I. Strict Scrutiny

The Fremont Constitution plainly rejects strict scrutiny as a test for free exercise claims. The Petitioner is wholly correct in citing *People v. Brisendine* and Fremont Const. Art. I § 23(a) to assert that our rights under the state constitution are mirror to those of the bill of rights merely due to textual similarity, but their assertion of the Fremont Constitutions requirement of strict scrutiny becomes clearly fanciful upon basic analysis of the text thereof. They cite the relevant section in full, which states, “Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.” Fremont Const. Art. I § 4. The Petitioner then endeavors to assert that the invocation of a “liberty of conscience” creates an explicit guarantee, which it seems they are vaguely asserting elevates Free Exercise as a right, to a level not present in the federal constitution. This is pure fiction. Both the general academic definition and the contextual definition given to it in Article I § 4 define a “liberty of conscience” as existing purely in the realm of free expression. “Within the sphere of liberty of conscience lies a person's ability to control his or her own *thoughts*, *beliefs* and *desires*. We might thereby think of liberty of conscience as the wellspring of human *thought and belief* - the *cognitive* and spiritual process that distinguishes man from animals.” Edward J. Eberle, Roger Williams on Liberty of Conscience Vol. 10 Iss. 2 Art. 2 (Spring 2005)(Roger Williams University Law Review)(emphasis added). It is important to note the consistent explicit use of diction invoking cognition, thought, and belief, and the lack of any diction invoking action or exercise. This is to assert that liberty of conscience is entirely disconnected from free exercise, and its usage in the Fremont Constitution is completely consistent with this definition. In fact, the invocation of the

phrase in Article I § 4 is to explicitly sever the right to free expression from the right to free exercise. The second sentance of the section, stating "This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State." The use of licentious directly implies the framers intend to enshrine neutrality and general applicability as the standard in Fremont, as licentious action if required by and engaged in on the grounds of religious dogma would "offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (quoting *Sherbert v. Verner*). *See also Johnson v. California*, 543 U.S. 499, 505 (2005) ("Under strict scrutiny, the government has the burden of proving that [statutes] are narrowly tailored measures that further compelling governmental interests."). Further, one must only reference the Petitioners briefs if they need persuasion that consensual licentious engagements between adults do not further compel government interests. This is all to assert that the framers of the Fremont Constitution did not draft Article I § 4 with any intention of ensuring the application of strict scrutiny to free exercise claims under Fremont law.